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13 [SEE SIGNATURE PAGE FOR
ADDITIONAL COUNSEL FOR PARTIES]

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16 **UNITED STATES DISTRICT COURT**
17 **NORTHERN DISTRICT OF CALIFORNIA**
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19 ANN OTSUKA, an individual; JANIS KEEFE,
an individual; CORINNE PHIPPS, and
20 individual; and JUSTIN KISER, an individual;
and on behalf of all others similarly situated,

Case No. C07-02780 SI

21
**JOINT CASE MANAGEMENT
CONFERENCE STATEMENT AND
FED. R. CIV. P. 26(F) REPORT**

22 Plaintiff;
v.
23 POLO RALPH LAUREN CORPORATION, a
Delaware Corporation; et al.,
24 Defendants.
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Date: January 25, 2008
Time: 2:00 p.m.
Dept.: Courtroom 10, 19th Floor
Judge: Hon. Susan Illston

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Pursuant to Federal Rule of Civil Procedure 26(f) and Local Rules 16-8 and 16-9, Plaintiffs Ann Otsuka, Janis Keefe, Corinne Phipps, Justin Kiser and Renee Davis (collectively "Plaintiffs"), and Defendants Polo Ralph Lauren Corporation, Polo Retail, LLC, Polo Ralph Lauren Corporation, doing business in California as Polo Retail Corporation, and Fashions Outlet of America, Inc. (collectively "Defendants"), respectfully submit their Joint Case Management Conference Statement and Rule 26(f) Report.

In this Joint Statement, the parties report progress or changes since the last statement was filed and submit proposals for the remainder of the case development process. (See, Local Rule 16-10(d).)

I. PROCEDURAL UPDATE

On September 26, 2007, Justin Kiser filed a Motion to Dismiss the Counterclaim of his former employer, Fashions Outlet of America, Inc. On November 9, 2007, the Court granted in part and denied in part Mr. Kiser's Motion to Dismiss, upholding Defendants' counterclaim for breach of fiduciary duty and granting with leave to amend Defendants' counterclaim for conspiracy to commit fraud. Defendants subsequently filed an Amended Counterclaim alleging a claim for conspiracy to commit conversion (rather than conspiracy to commit fraud). Defendants have also agreed to Plaintiff Kiser's request for additional time to file a responsive pleading to the Amended Counterclaim.

On October 3, 2007, Plaintiffs filed a motion seeking permission from the Court to amend the Complaint to add Renee Davis as a named putative class representative. Before the hearing on the motion to amend was held, Defendants entered into a stipulation with Plaintiffs, withdrawing their opposition to the filing of a Second Amended Complaint. Plaintiffs filed the Second Amended Complaint on October 24, 2007.

Defendants subsequently filed a motion to dismiss the Second Amended Complaint based on statute of limitations grounds. On January 9, 2008, the Court denied Defendants' motion to dismiss, without hearing. Defendants' Answer is due on January 28, 2008.

At the last Case Management Conference on September 21, 2007, the Court granted Plaintiffs Janis Keefe, Corinne Phipps and Justin Kiser's motion to relieve Daniel Feder as counsel and granted

1 the motion to relieve Patrick Kitchin as counsel to Plaintiff Ann Otsuka and denied same with respect
2 to Mr. Feder.

3 **II. DISCOVERY UPDATE**

4 Since the last Case Management Conference, Plaintiffs have taken the depositions of six
5 persons designated by Polo as qualified under Rule 30(b)(6). These depositions were taken at Polo's
6 counsels' offices in New York City during the weeks of December 3, 2007, and January 14, 2008.
7 Defendants took the deposition of Plaintiff Justin Kiser on December 4, 2007, also in New York City.

8 **A. PLAINTIFFS' ADDITIONAL DISCOVERY PROPOSALS**

9 Defendants' Rule 30(b)(6) designees identified several other individuals who appear
10 principally qualified to address Polo's operations in California. These 30(b)(6) witnesses identified
11 or produced exemplars of documents that memorialize wage and hour processes and procedures
12 relating to matters at issue in this case. Within the next two weeks, Plaintiffs will ask Defendants to
13 provide them with a proposed schedule for taking several additional depositions of specified Polo
14 employees. Plaintiffs also intend to notice depositions of percipient witnesses, including at least one
15 witness who resides out-of-state. Plaintiffs will also serve additional interrogatories, requests for
16 production and requests for admissions designed to gather additional information relevant to class
17 certification issues.

18 Plaintiffs are currently waiting for a proposed schedule from Defendants for taking
19 depositions of Polo's regional manager and the former general manager of its San Francisco store
20 where three of the named plaintiffs worked. Plaintiffs have indicated they will produce Plaintiffs
21 Janis Keefe, Renee Davis and Ann Otsuka for deposition at a mutually convenient time and place,
22 and have asked Defendants to provide them with a proposed schedule.

23 **B. DEFENDANTS' ADDITIONAL DISCOVERY PROPOSALS**

24 Since the last Case Management Conference, Defendants deposed Plaintiff Justin Kiser and
25 twice had scheduled the deposition of Janis Keefe who rescheduled both times due to her pregnancy
26 and the birth of her child in November 2007. Defendants are presently in the process of re-
27 scheduling the Janis Keefe deposition as well as setting a date for the deposition of newly added
28

1 Plaintiff Renee Davis and Plaintiff Ann Otsuka. Defendants anticipate potentially noticing
 2 depositions of other percipient witnesses, as warranted by unfolding discovery.

3 Both Defendants and Plaintiffs anticipate that all percipient witness depositions will conclude
 4 by April 2008. Defendants also intend on propounding further written discovery, including Requests
 5 for Production of Documents, Interrogatories and Requests for Admissions over the next ninety days.

6 Given the complexity of the litigation and anticipated discovery, Defendants continue to
 7 expect that discovery will be completed in or about July 2008. Defendants continue to anticipate an
 8 exchange of expert disclosures and reports by August 2008, with rebuttal and the completion of
 9 expert discovery (including depositions) to occur in our about October 2008.

10 **III. AMENDMENT OF THE PLEADINGS**

11 Plaintiffs anticipate they will seek a stipulation for the filing of a Third Amended Complaint
 12 within the next 60 days that will withdraw and/or modify portions of their claims to conform the
 13 pleading to evidence collected through formal discovery and privileged investigation. (For example,
 14 unless Plaintiffs obtain contrary evidence through the testimony of additional Polo witnesses,
 15 Plaintiffs will withdraw their claim under the Private Attorneys General Act that Polo systematically
 16 failed to provide health care insurance payments as promised.)

17 **IV. CLASS CERTIFICATION**

18 The Court set a hearing on class certification for May 9, 2008, requiring Plaintiffs to file their
 19 opening briefs no later than April 4, 2008. Plaintiffs are making substantial progress toward the
 20 collection of sufficient evidence to support class certification and do not now anticipate a need to
 21 extend these dates. Plaintiffs request, however, that the Court set a Case Management Conference for
 22 late March 2008 so the parties can report process and readiness for class certification. Defendants
 23 have no objection to the Court's original schedule for hearing the class certification motion.

24 **V. NARROWING OF ISSUES**

25 **A. Plaintiffs' Position**

26 Plaintiffs anticipate they will be in a good position to narrow some issues within the next 60
 27 days by modifying and/or withdrawing some class-wide claims based on the results of discovery and
 28 investigations they have performed to date and which they will perform over the next two months.

1 Plaintiffs will make decisions regarding the narrowing of issues after they complete the necessary
 2 additional discovery currently proposed.

3 **B. Defendants' Position**

4 Defendants continue to anticipate bringing a Motion for Summary Judgment, or, in the
 5 alternative, Motion for Summary Adjudication as to some or all of Plaintiffs' claims, to be filed on or
 6 about the same time as the motion for class certification.

7 **VI. ALTERNATIVE DISPUTE RESOLUTION**

8 The parties will pursue mediation before JAMS or a comparable service, pursuant to the
 9 September 18, 2007 Stipulation and Order Selecting ADR Process to occur within sixty days
 10 following the Court's ruling on Plaintiffs' Motion for Class Certification. Defendants seek to
 11 maintain the parties' original stipulation and the Court's order setting mediation for sixty days after
 12 class certification ruling, while Plaintiffs now seek a shorter thirty-day window for mediation in an
 13 effort to avoid expenses between class certification and mediation.

14 **VII. PROPOSED PRETRIAL SCHEDULE**

15 **A. Plaintiffs' Proposed Schedule¹**

Exchange expert disclosures/reports	October 2008
Completion of all fact discovery and last day to file any fact discovery motions	October 2008
Deadline for completion of ADR process	Thirty days after class certification motion ruling.
Filing of Plaintiffs' motion for class certification	April 2008
Exchange rebuttal expert disclosures/reports	November 2008
Completion of all expert discovery and last day to file any expert discovery motions	November 2008
Deadline for filing summary judgment motions	September 31, 2008

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 28 ¹ Plaintiffs have modified these dates, generally by one month, to conserve resources between class
 certification and mediation. This proposed schedule keeps the proposed trial date in November 2008.

1 Final Pretrial Conference	October 2008
2 Trial	November 2008

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4 **B. DEFENDANTS' PROPOSED SCHEDULE**

5 Defendants maintain their pretrial schedule as originally proposed.

6 Deadline to file motion to add parties or amend pleadings	October 31, 2007
7 Completion of all fact discovery	July 31, 2008
8 Deadline to file any fact discovery motions	July 31, 2008
9 Exchange expert disclosures/reports	August 31, 2008
10 Exchange rebuttal expert disclosures/reports	September 31, 2008
11 Completion of all expert discovery	October 31, 2008
12 Deadline to file any expert discovery motions	October 31, 2008
13 Deadline for completion of ADR process	Sixty days after class certification motion ruling
15 Deadline for filing summary judgment motions	August 31, 2008
17 Final Pretrial Conference	September 2008
18 Trial	November 2008

1 Dated: January 23, 2008

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Dated: January 23, 2008

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Corinne Phipps and Renee Davis**

Dated: January 23, 2008

THE LAW OFFICES OF DANIEL FEDER

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15 **California as Polo Retail Corporation; and**
16 **Fashions Outlet of America, Inc.**
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